

PSYCH-APPEAL, INC.  
Meiram Bendat (Cal. Bar No. 198884)  
8560 West Sunset Boulevard, Suite 500  
West Hollywood, CA 90069  
Tel: (310) 598-3690, x 101  
Fax: (888) 975-1957  
mbendat@psych-appeal.com

ZUCKERMAN SPAEDER LLP  
D. Brian Hufford (*pro hac vice* forthcoming)  
Jason S. Cowart (*pro hac vice* forthcoming)  
485 Madison Avenue, 10<sup>th</sup> Floor  
New York, NY 10022  
Tel: (212) 704-9600  
Fax: (212) 704-4256  
dbhufford@zuckerman.com  
jcowart@zuckerman.com

ZUCKERMAN SPAEDER LLP  
Caroline E. Reynolds (*pro hac vice* forthcoming)  
1800 M St., NW, Suite 1000  
Washington, DC 20036  
Tel: (202) 778-1800  
Fax: (202) 822-8106  
creynolds@zuckerman.com

*Attorneys for Plaintiff and the Putative Class*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

SANDRA TOMLINSON, on her own  
behalf and on behalf of her beneficiary  
daughter, and on behalf of all others  
similarly situated,

Plaintiff,

v.

UNITED BEHAVIORAL HEALTH,  
Defendant.

Case No. 3:19-cv-6999

**CLASS ACTION COMPLAINT**

1 Plaintiff Sandra Tomlinson (“Plaintiff”), complains as follows on behalf of herself, her  
2 beneficiary daughter, and all others similarly situated, based on the best of her knowledge,  
3 information and belief, formed after an inquiry reasonable under the circumstances by herself and  
4 her undersigned counsel, against Defendant United Behavioral Health (“UBH”):

### 5 INTRODUCTION

6 1. This case arises from Defendant UBH’s creation of its 2017 “Level of Care  
7 Guidelines” and its use of those Guidelines to determine whether mental health and/or substance  
8 use disorder services for which coverage was requested were consistent with generally accepted  
9 standards of care.

10 2. As detailed below, the 2017 Level of Care Guidelines at issue herein were among  
11 the UBH Guidelines challenged in two certified class actions pending in this Court: *Wit, et al. v.*  
12 *United Behavioral Health*, Case No. 14-cv-02346-JCS (N.D. Cal.) and *Alexander, et al. v. United*  
13 *Behavioral Health*, Case No. 14-cv-05337-JCS (N.D. Cal.). The cases have been consolidated  
14 and will be referred to collectively herein as the “*Wit* Litigation.” The plaintiffs in the *Wit*  
15 Litigation asserted claims against UBH under the Employee Retirement Income Security Act of  
16 1974 (“ERISA”), 29 U.S.C. § 1001 - 1461.

17 3. Following a trial on the merits of the *Wit* Litigation, Chief Magistrate Judge  
18 Joseph C. Spero of this Court found that the UBH Level of Care Guidelines in effect from 2011  
19 through 2017—including the 2017 Level of Care Guidelines at issue herein—were unreasonable  
20 and did not reflect generally accepted standards of care, and thus conflicted with the relevant  
21 terms of the *Wit* class members’ plans. Accordingly, Judge Spero concluded that UBH breached  
22 its ERISA fiduciary duties by adopting its pervasively-flawed Guidelines and that UBH abused its  
23 discretion when it used the Guidelines to deny coverage to the *Wit* class members. At the time  
24 this Complaint is being filed, Judge Spero has not yet issued a remedies order in the *Wit*  
25 Litigation.

26 4. The three certified classes in the *Wit* Litigation (collectively, the “*Wit* Class”)   
27 include only UBH members whose requests for coverage were denied by UBH between May 22,  
28 2011 and June 1, 2017. As a result, UBH insureds, like Plaintiff’s daughter, whose requests for

1 coverage were denied by UBH on or after June 2, 2017 based on the defective 2017 Level of Care  
2 Guidelines are not members of the *Wit* Class and will not share in any of the remedies ultimately  
3 ordered by the Court in that case—even though UBH continued using its pervasively-flawed 2017  
4 Level of Care Guidelines until May 9, 2018.

5 5. UBH has already been found liable for breaching its fiduciary duties and violating  
6 ERISA by creating the pervasively-flawed 2017 Level of Care Guidelines and using them to deny  
7 coverage to thousands of its members. Plaintiff brings this action to ensure that *all* UBH  
8 members who were injured by UBH’s proven misconduct with respect to the 2017 Level of Care  
9 Guidelines, including Plaintiff and her daughter, will obtain all the relief available to them under  
10 ERISA.

#### 11 **THE PARTIES**

12 6. Plaintiff Sandra Tomlinson is a participant in the S&P Global Inc. Plan, an  
13 employee welfare benefit plan sponsored by Plaintiff’s employer (the “Tomlinson Plan” or the  
14 “Plan”). Plaintiff’s daughter is Plaintiff’s dependent and a beneficiary of the Tomlinson Plan.  
15 Plaintiff resides in Maplewood, New Jersey.

16 7. Defendant United Behavioral Health (“UBH”), which also operates as  
17 OptumHealth Behavioral Solutions, is a corporation organized under California Law, with its  
18 principal place of business in San Francisco, California.

19 8. UBH administers mental health and substance use disorder benefits for  
20 commercial welfare benefit plans. In this role, UBH administers requests for coverage on behalf  
21 of members of health benefit plans governed by ERISA, including the health benefit plans of  
22 Plaintiff and the members of the putative class alleged herein. UBH thus has the authority to  
23 make final and binding benefit coverage determinations for mental health and substance use  
24 disorder services (collectively, “behavioral health services”) under the plans it administers.

25 9. Because of the role UBH plays in making benefit determinations under the plans it  
26 administers, UBH is a fiduciary under ERISA.

**JURISDICTION AND VENUE**

10. Defendant UBH's actions in administering employer-sponsored health care plans, including exercising discretion with respect to determinations of coverage for Plaintiff's daughter under the Tomlinson Plan, are governed by ERISA, 29 U.S.C. §§ 1001 - 1461. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and 29 U.S.C. § 1132(e) (ERISA).

11. Personal jurisdiction over Defendant UBH exists with this Court. United Behavioral Health is a corporation organized under California law, with significant contacts in California.

12. Venue is appropriate in this District. Defendant is headquartered in this District, administers plans here and conducts significant operations here.

**INTRADISTRICT ASSIGNMENT**

13. This case should be assigned to the San Francisco Division of this Court because Defendant UBH is headquartered in this District, administers plans here and conducts significant operations here. In addition, assignment to the San Francisco Division is appropriate because this action is related to two consolidated actions currently pending before Chief Magistrate Judge Joseph C. Spero in this Division, *Wit, et al. v. United Behavioral Health*, Case No. 14-cv-02346-JCS (N.D. Cal.) and *Alexander, et al. v. United Behavioral Health*, Case No. 14-cv-05337-JCS (N.D. Cal.).

**STATEMENT OF FACTS**

**I. Plaintiff's Plan**

14. The Tomlinson Plan is a self-funded plan governed by ERISA.

15. The Plan covers treatment for sickness, injury, mental illness, and substance use disorders. Residential treatment is a covered benefit under the Plan. The Plan does not limit coverage for residential treatment to emergency, short-term or crisis stabilization services.

16. As the behavioral health administrator for the Tomlinson Plan, UBH exercises its discretion to interpret Plan terms, limitations, and exclusions, to make determinations of coverage for behavioral health services, and to cause any resulting benefit payments to be made by the

1 Plan. Under the terms of the Tomlinson Plan, an essential condition of coverage is that covered  
2 services must be consistent with generally accepted standards of care.

3 17. Therefore, one of the essential determinations UBH must make when reviewing  
4 claims for coverage under the Plan is whether the services for which coverage is requested are  
5 consistent with generally accepted standards of care. As described below, UBH developed its  
6 Level of Care Guidelines to use in making those determinations.

## 7 **II. UBH's Fiduciary Status**

8 18. Because UBH has and exercises discretion with respect to the administration of the  
9 Plan, and because it makes all benefit determinations for behavioral health coverage under the  
10 Plan, UBH is a fiduciary within the meaning of ERISA, 29 U.S.C. § 1104.

11 19. As an ERISA fiduciary, UBH owes a duty of loyalty to plan participants and  
12 beneficiaries, which requires it to discharge its duties "solely in the interests of the participants  
13 and beneficiaries" of the plans it administers and for the "exclusive purpose" of providing  
14 benefits to participants and beneficiaries and paying reasonable expenses of administering the  
15 plan. UBH also owes plan participants and beneficiaries a duty of care, which requires it to act  
16 with reasonable "care, skill, prudence, and diligence" and in accordance with the terms of the  
17 plans, so long as such terms are consistent with ERISA.

## 18 **III. Generally Accepted Standards of Medical Practice**

19 20. Generally accepted standards of care, in the context of mental health and substance  
20 use disorder services, are the standards that have achieved widespread acceptance among  
21 behavioral health professionals.

22 21. In the area of mental health and substance use disorder treatment, there is a  
23 continuum of intensity at which services are delivered. There are generally accepted standards of  
24 care for matching patients with the level of care that is most appropriate and effective for treating  
25 patients' conditions.

26 22. These generally accepted standards of care can be gleaned from and are reflected  
27 in multiple sources, including peer-reviewed studies in academic journals, consensus guidelines  
28 from professional organizations, and guidelines and materials distributed by government

1 agencies, including: (a) the American Society of Addiction Medicine (“ASAM”) Criteria; (b) the  
 2 American Association of Community Psychiatrists’ (“AACP”) Level of Care Utilization System;  
 3 (c) the Child and Adolescent Level of Care Utilization System (“CALOCUS”) developed by  
 4 AACP and the American Academy of Child and Adolescent Psychiatry (“AACAP”); and the  
 5 Child and Adolescent Service Intensity Instrument (“CASII”) which was developed by AACAP  
 6 in 2001 as a refinement of CALOCUS; (d) the Medicare benefit policy manual issued by the  
 7 Centers for Medicare and Medicaid Services (“CMS”); (e) the APA Practice Guidelines for the  
 8 Treatment of Patients with Substance Use Disorders, Second Edition; (f) the American  
 9 Psychiatric Association’s Practice Guidelines for the Treatment of Patients with Major  
 10 Depressive Disorder; and (g) AACAP’s Principles of Care for Treatment of Children and  
 11 Adolescents with Mental Illnesses in Residential Treatment Centers.

12 23. The generally accepted standards of care for matching patients with the most  
 13 appropriate and effective level of care for treating patients’ mental health conditions and  
 14 substance use disorders include the following:

- 15 a. **First**, many mental health and substance use disorders are long-term and chronic.  
 16 While current symptoms are typically related to a patient’s chronic condition, it is  
 17 generally accepted in the behavioral health community that effective treatment of  
 18 individuals with mental health or substance use disorders is not limited to the  
 19 alleviation of the current symptoms. Rather, effective treatment requires treatment  
 20 of the chronic underlying condition as well.
- 21 b. **Second**, many individuals with behavioral health diagnoses have multiple, co-  
 22 occurring disorders. Because co-occurring disorders can aggravate each other,  
 23 treating any of them effectively requires a comprehensive, coordinated approach to  
 24 all conditions. Similarly, the presence of a co-occurring medical condition is an  
 25 aggravating factor that may necessitate a more intensive level of care for the  
 26 patient to be effectively treated.
- 27 c. **Third**, in order to treat patients with mental health or substance use disorders  
 28 effectively, it is important to “match” them to the appropriate level of care. The

1 driving factors in determining the appropriate treatment level should be safety and  
2 effectiveness. Placement in a less restrictive environment is appropriate only if it is  
3 likely to be safe and *just as effective* as treatment at a higher level of care

4 d. **Fourth**, when there is ambiguity as to the appropriate level of care, generally  
5 accepted standards call for erring on the side of caution by placing the patient in a  
6 higher level of care. Research has demonstrated that patients with mental health  
7 and substance use disorders who receive treatment at a lower level of care than is  
8 clinically appropriate face worse outcomes than those who are treated at the  
9 appropriate level of care. On the other hand, there is no research that establishes  
10 that placement at a higher level of care than is appropriate results in an increase in  
11 adverse outcomes.

12 e. **Fifth**, while effective treatment may result in improvement in the patient's level of  
13 functioning, it is well-established that effective treatment also includes treatment  
14 aimed at preventing relapse or deterioration of the patient's condition and  
15 maintaining the patient's level of functioning.

16 f. **Sixth**, the appropriate duration of treatment for behavioral health disorders is  
17 based on the individual needs of the patient; there is no specific limit on the  
18 duration of such treatment. Similarly, it is inconsistent with generally accepted  
19 standards of medical practice to require discharge as soon as a patient becomes  
20 unwilling or unable to participate in treatment.

21 g. **Seventh**, one of the primary differences between adults, on the one hand, and  
22 children and adolescents, on the other, is that children and adolescents are not fully  
23 "developed," in the psychiatric sense. The unique needs of children and  
24 adolescents must be taken into account when making level of care decisions  
25 involving their treatment for mental health or substance use disorders. One of the  
26 ways practitioners take into account the developmental level of a child or  
27 adolescent in making treatment decisions is by relaxing the threshold requirements  
28 for admission and continued service at a given level of care.

1 h. **Eighth**, the determination of the appropriate level of care for patients with mental  
2 health and/or substance use disorders should be made on the basis of a  
3 multidimensional assessment that takes into account a wide variety of information  
4 about the patient. Except in acute situations that require hospitalization, where  
5 safety alone may necessitate the highest level of care, decisions about the level of  
6 care at which a patient should receive treatment should be made based upon a  
7 holistic, biopsychosocial assessment that involves consideration of multiple  
8 dimensions.

9 24. UBH, as a claims administrator and ERISA fiduciary, owed the participants and  
10 beneficiaries of the plans it administers a fiduciary duty to take reasonable steps to interpret the  
11 plans, including when establishing the criteria by which it would determine whether services are  
12 consistent with generally accepted standards of care. It was UBH's duty to use due care and act  
13 prudently and solely in the interests of the plan participants and beneficiaries when doing so.

14 25. When interpreting its plans, UBH had access to the independent, publicly available  
15 sources, described above, that elucidate the generally accepted standards of care. Thus, UBH  
16 knew, or should have known, what the generally accepted standards of care are.

#### 17 **IV. The 2017 Level of Care Guidelines**

18 26. UBH exercised its discretion under the plans it administers by, among other things,  
19 developing, adopting, and applying its own clinical criteria for determining whether services for  
20 which coverage is requested are consistent with generally accepted standards of care. The clinical  
21 criteria UBH adopted and applied are called the UBH Level of Care Guidelines.

22 27. The Level of Care Guidelines are organized by the situs of care, or "level of care,"  
23 according to progressive levels of service intensity along the continuum of care (*i.e.*, outpatient,  
24 intensive outpatient, partial hospitalization, residential, and hospital).

25 28. The 2017 Level of Care Guidelines at issue in this case contained a set of  
26 mandatory "Common Criteria," all of which had to be satisfied for coverage to be approved at  
27 any level of care. In addition, the Guidelines contained specific criteria applicable to particular  
28



1 levels of care in the context of either mental health conditions or substance use disorders, which  
2 also had to be satisfied in order for coverage to be approved at a particular level of care.

3 29. As noted above, Judge Spero found, after a trial on the merits in the *Wit* Litigation,  
4 that UBH's 2017 Level of Care Guidelines (among others) were pervasively more restrictive than  
5 the generally accepted standards of care described above, and thus conflicted with the terms of  
6 the ERISA plans at issue, which—like Plaintiff's Plan—required services to be consistent with  
7 generally accepted standards.

8 30. In a detailed opinion, Judge Spero held that the UBH Level of Care Guidelines in  
9 effect from 2011 to 2017 were pervasively more restrictive than generally accepted standards of  
10 care because they restricted coverage to the treatment of acute behavioral health conditions and  
11 symptoms, in contrast to generally accepted standards of care that include concurrent effective  
12 treatment to address chronic or co-occurring conditions or symptoms.

13 31. As Judge Spero held, UBH's Level of Care Guidelines, including the 2017 Level  
14 of Care Guidelines, were "riddled with requirements that provided for narrower coverage than is  
15 consistent with generally accepted standards of care." Judge Spero further found that these  
16 defects were driven by UBH's financial self-interest, and that use of the Level of Care Guidelines  
17 to determine whether services were consistent with generally accepted standards was  
18 "unreasonable and an abuse of discretion because they were more restrictive than generally  
19 accepted standards of care."

20 32. Judge Spero's decision in the *Wit* Litigation thus applies directly to the 2017 Level  
21 of Care Guidelines that UBH used to deny coverage to Plaintiff's daughter.

22 33. Following the trial in the *Wit* Litigation, in late 2018, UBH announced that it  
23 would "retire" its proprietary substance use guidelines and instead begin applying the ASAM  
24 Criteria when administering benefits for substance use disorder treatment.

25 34. Only after Judge Spero issued his ruling on the merits in the *Wit* Litigation, UBH  
26 announced that it also intends to discontinue use of its Level of Care Guidelines for mental health  
27 treatment and to transition to non-profit, clinical specialty association guidelines by early 2020.  
28

35. Notwithstanding these subsequent developments, and even though UBH knew, or should have known, that its 2017 Level of Care Guidelines were much more restrictive than generally accepted standards of care, and that UBH developed them to advance its own financial self-interest as well as that of its other corporate affiliates and employer-plan sponsors, UBH continued to apply its unreasonably overly-restrictive 2017 Level of Care Guidelines until May 9, 2018, when UBH released a new (and equally flawed) version of the Guidelines.

36. By continuing to use its own overly-restrictive Guidelines, UBH, among other things, a) avoided or reduced the benefit expense it would otherwise pay from its own assets if approving coverage under insured plans; b) saved its plan-sponsor employers money (albeit in contravention of plan terms), making it more likely that plan sponsors would employ UBH as claims administrator, thus prioritizing UBH's own financial interest; c) avoided incurring licensing and other costs it would have incurred if it used third-party guidelines.

**V. UBH Denied Coverage to Plaintiff's Daughter Pursuant to its Overly Restrictive 2017 Level of Care Guidelines**

37. On May 12, 2017, Plaintiff's daughter was admitted to Uinta Academy in Wellsville, Utah, for residential treatment of her co-occurring reactive attachment disorder, major depressive disorder, post-traumatic stress disorder and other mental health conditions. UBH authorized coverage for about five weeks, but then denied any further coverage from June 21, 2017 forward.

38. In its June 27, 2017 written notification of the adverse benefit determination, UBH stated:

United Behavioral Health (UBH) is responsible for making benefit coverage determinations for mental health and substance abuse services that are provided to UBH Members. . . .

Based on the Optum Level of Care Guideline for Mental Health Residential Treatment Center Level of Care, it is my determination that no further authorization can be provided from 6/21/2017-forward.

1           39.     UBH thus denied coverage for Plaintiff's daughter's residential treatment, in  
2 whole or in part, based on UBH's 2017 Level of Care Guidelines.

3           40.     Plaintiff submitted an internal appeal to UBH requesting review of its denial of her  
4 daughter's residential treatment.

5           41.     UBH denied the appeal, upholding the denial of coverage. In a July 3, 2018 letter,  
6 UBH reiterated that benefit coverage was not available "[b]ased on the Optum Level of Care  
7 Guideline for the Mental Health Residential Treatment Center Level of Care and Common  
8 Criteria and Clinical Best Practices for all levels of care."

9           42.     Plaintiff submitted a second-level appeal, which UBH also denied. In an October  
10 25, 2018 letter, UBH again upheld the denial of coverage, again citing "the Optum Level of Care  
11 Guideline for the Mental Health Residential Treatment Center Level of Care."

12           43.     The Tomlinson Plan also permits members to seek external review of an adverse  
13 benefit determination from a so-called "independent" review organization contracted with UBH.  
14 On January 28, 2019, Plaintiff requested an external review of UBH's denial of coverage for her  
15 daughter's residential treatment at Uinta. On March 14, 2019, the External Review organization,  
16 MES Peer Review Services, upheld the denial, citing, among other things, the "Optum Level of  
17 Care Guidelines: Mental Health Conditions."

18           44.     On April 12, 2019, UBH sent a "corrected letter," again denying coverage for  
19 Plaintiff's daughter's residential treatment, again citing "the Optum Level of Care Guideline for  
20 the Mental Health Residential Treatment Center Level of Care." This denial letter stated, "[t]his  
21 is the Final Adverse Determination of your internal appeal. All internal appeals through UBH  
22 have been exhausted."

23           45.     Based on the clinical advice of her treating providers, Plaintiff's daughter  
24 remained in residential treatment at Uinta until May 15, 2018. Plaintiff Tomlinson incurred  
25 significant unreimbursed out-of-pocket expenses for her daughter's residential treatment services.

26           46.     Each of UBH's letters denying coverage to Plaintiff's daughter also stated that  
27 "care could continue" in the Partial Hospitalization Program setting.  
28

47. Residential treatment subsumes all the clinical components of a partial hospitalization program. Thus, services at a partial hospitalization level of care are necessarily included within residential treatment services.

48. Nevertheless, UBH did not approve benefits for the services Plaintiff's daughter received at the rate applicable to the lesser included level of care. Instead, UBH denied coverage in full, despite its own recognition that Plaintiff's daughter needed ongoing treatment.

#### **VI. UBH Violated ERISA and the Plan's Terms**

49. In light of its central role in administering claims for coverage of mental health and substance use disorder treatment, UBH is an ERISA fiduciary as defined by 29 U.S.C. § 1104(a). By developing, adopting, and applying its own Level of Care Guidelines, which are overly restrictive and in contravention of generally accepted standards of care, UBH violated its fiduciary duties. Moreover, by using those Guidelines to deny Plaintiff's daughter's requests for coverage, UBH violated the written terms of Plaintiff's Plan.

#### **CLASS CLAIMS**

50. Plaintiff incorporates by reference all preceding paragraphs as though each were fully stated herein.

51. UBH followed the same policies and practices when administering Plaintiff's daughter's requests for coverage as when administering the coverage requests of other similarly-situated individuals seeking coverage under their health plans for residential behavioral health treatment.

52. As such, Plaintiff brings each of her claims, set forth in the counts below, on behalf of the following class ("Class"):

Any participant or beneficiary in a health benefit plan governed by ERISA whose request for coverage of residential treatment services for a mental illness or substance use disorder was denied by UBH, in whole or in part, on or after June 2, 2017, based upon UBH's 2017 Level of Care Guidelines.

53. The members of the class can be objectively ascertained through the use of information contained in UBH's files because UBH knows who its members are, by which plans

1 they are insured, what type of requests for coverage they have filed, and how those claims were  
2 adjudicated.

3 54. Upon information and belief, the members of the Class are so numerous that  
4 joinder of all members is impracticable. While the number of class members is solely within  
5 UBH's possession, Plaintiff in good faith believes that the Class consists of at least hundreds of  
6 ERISA participants and beneficiaries. The evidence in the *Wit* Litigation established that UBH  
7 denied more than 1,000 requests for coverage of residential treatment services under the 2017  
8 Level of Care Guidelines between March 12, 2017 and June 1, 2017, a period of less than three  
9 months. UBH continued using the 2017 Level of Care Guidelines for another eleven months after  
10 the *Wit* Class period closed.

11 55. Common questions of law and fact exist as to all members of the Class and  
12 predominate over any questions affecting solely individual members of the Class, including but  
13 not limited to: (a) the collateral estoppel effect of Judge Spero's post-trial Findings of Fact and  
14 Conclusions of Law in the *Wit* Litigation with respect to the 2017 Level of Care Guidelines; and  
15 (b) what remedies are available to the Class for UBH's breaches of fiduciary duties and violations  
16 of ERISA.

17 56. Certification is desirable and proper because the Plaintiff's claims are typical of  
18 the claims of the members of the class Plaintiff seeks to represent, because, as alleged herein, the  
19 2017 Level of Care Guidelines UBH developed and used to deny coverage to Plaintiff's daughter  
20 were also used by UBH to deny coverage to the other members of the Class.

21 57. Plaintiff will fairly and adequately protect the interests of the members of the  
22 Class, is committed to the vigorous prosecution of this action, has retained counsel competent and  
23 experienced in class action and ERISA health insurance-related litigation, and has no interests  
24 antagonistic to or in conflict with those of the Class.

25 58. A class action is superior to other available methods for the fair and efficient  
26 adjudication of this controversy, because joinder of all members of the Class is impracticable.  
27 Further, the expense and burden of individual litigation make it irrational for class members  
28 individually to redress the harm done to them. Moreover, because this case involves class

1 members who suffer from behavioral health conditions, and those who suffer from such  
2 conditions continue to experience social stigma, it is unlikely that many class members would be  
3 willing to have their conditions become public knowledge by filing individual lawsuits. Given  
4 the uniform policy and practices at issue, there will also be no difficulty in the management of  
5 this litigation as a class action.

6  
7 **COUNT I**  
**Breach of Fiduciary Duty**

8 59. Plaintiff incorporates by reference the preceding paragraphs as though such  
9 paragraphs were fully stated herein.

10 60. Plaintiff brings this Count on behalf of herself, her daughter, and all others  
11 similarly situated, pursuant to 29 U.S.C. § 1132(a)(1)(B), to remedy UBH's breaches of fiduciary  
12 duty alleged above.

13 61. As explained above, UBH exercised its discretionary authority to interpret and  
14 apply plan terms when it created its 2017 Level of Care Guidelines and when it used those  
15 Guidelines to make coverage determinations under Plaintiff's and the class members' plans. As  
16 such, UBH was an ERISA fiduciary.

17 62. As an ERISA fiduciary, pursuant to 29 U.S.C. § 1104(a), UBH was required,  
18 among other things, to carry out its duties solely in the interests of the participants and  
19 beneficiaries of the plans, to exercise reasonable prudence and due care, and to comply with the  
20 terms of Plaintiff's and the class members' plans.

21 63. UBH violated its fiduciary duties by adopting the restrictive 2017 Level of Care  
22 Guidelines at issue herein. Despite the facts that Plaintiff's and the class members' plans provide  
23 for UBH to determine whether services for which coverage is requested are consistent with  
24 generally accepted standards of care; that the generally accepted standards of care are widely  
25 available and well-known to UBH; and that UBH asserted that its guidelines were consistent with  
26 such standards, UBH's 2017 Level of Care Guidelines are in fact—and as proven at the *Wit*  
27 Litigation trial—much more restrictive than generally accepted standards. In adopting the 2017  
28 Level of Care Guidelines and using them to deny coverage to Plaintiff's daughter and the class

1 members, UBH did not act “solely in the interests of the participants and beneficiaries” for the  
2 “exclusive purpose” of “providing benefits.” It did not utilize the “care, skill, prudence and  
3 diligence” of a “prudent man” acting in a similar capacity. It did not act in accordance with the  
4 terms of Plaintiff’s or the class members’ Plans.

5 64. Instead, UBH elevated its own interests and those of its corporate affiliates and  
6 plan-sponsor employer customers above the interests of plan participants and beneficiaries. By  
7 adopting its improperly restrictive guidelines, UBH dramatically narrowed the scope of coverage  
8 available under the Plaintiff’s and class members’ Plans and artificially decreased the number and  
9 value of covered claims, thereby benefiting itself, its corporate affiliates, and its employer  
10 customers.

11 65. Plaintiff and the members of the Class have been harmed by UBH’s breaches of  
12 fiduciary duty because UBH’s development and adoption of the excessively restrictive standards  
13 in the 2017 Level of Care Guidelines narrowed the scope of coverage available under their plans  
14 and because their requests for benefits were determined according to a standard that conflicted  
15 with the terms of their plans. UBH’s use of these excessively restrictive guidelines made it less  
16 likely that UBH would determine that their claims were covered.

17 66. Plaintiff and the members of the Class seek the relief identified below to remedy  
18 UBH’s breaches of fiduciary duty.

19 **COUNT II**  
20 **Violation of Plan Terms**

21 67. Plaintiff incorporates by reference the preceding paragraphs as though such  
22 paragraphs were fully stated herein.

23 68. Plaintiff brings this Count on behalf of herself, her daughter, and all others  
24 similarly situated, pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B).

25 69. UBH denied the requests for coverage of residential treatment submitted by  
26 Plaintiff and the other members of the Class, at least in part, based on its systematic practice of  
27 using its 2017 Level of Care Guidelines to determine whether services were consistent with  
28

generally accepted standards of care, even though those Guidelines were much more restrictive than generally accepted standards and thus violated the relevant terms of the applicable Plans.

70. Additionally, UBH wrongfully failed to approve coverage for services that it deemed medically necessary under its Guidelines (*e.g.*, partial hospitalization treatment) for no other reason than that those services were obtained as part of treatment at a higher level of care (*e.g.*, residential treatment).

71. UBH's denials of coverage to Plaintiff and the Class were thus wrongful and violated ERISA.

72. Plaintiff and the members of the Class seek the relief identified below to remedy these ERISA violations.

### COUNT III Claim for Injunctive Relief

73. Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

74. Plaintiff brings this Count on behalf of herself, her daughter, and all others similarly situated, pursuant to 29 U.S.C. § 1132(a)(3)(A), to enjoin Defendant UBH's acts and practices that violate ERISA, as detailed above. Plaintiff brings this claim only to the extent that the Court finds that the injunctive relief sought is unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B).

75. Plaintiff and the class have been harmed, and are likely to be harmed in the future, by UBH's ERISA violations described above.

76. In order to remedy these harms and prevent future harm, Plaintiff and the Class are entitled to enjoin these acts and practices pursuant to 29 U.S.C. § 1132(a)(3)(A).

### COUNT IV Claim for Appropriate Equitable Relief

77. Plaintiff incorporates by reference all preceding paragraphs as though each were fully stated herein.



78. Plaintiff brings this Count on behalf of herself, her daughter, and all others similarly situated, pursuant to 29 U.S.C. § 1132(a)(3)(B), to obtain appropriate equitable relief to redress Defendant UBH's breaches of fiduciary duty and ERISA violations, as detailed above. Plaintiff brings this claim only to the extent that the Court finds that the equitable relief available pursuant to 29 U.S.C. § 1132(a)(1)(B) is inadequate to fully remedy the violations alleged in Counts I and/or II above.

79. Plaintiff and the Class have been harmed, and are likely to be harmed in the future, by UBH's breaches of fiduciary duty and ERISA violations described above.

80. Additionally, by engaging in this misconduct, UBH unjustly enriched itself and/or allowed its corporate affiliates to be unjustly enriched insofar as they were not required to pay benefit claims or were required to pay less for those claims than required under the relevant plan terms.

81. In order to remedy these harms, Plaintiff and the Class are entitled to appropriate equitable relief pursuant to 29 U.S.C. § 1132(a)(3)(B).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment in her favor against Defendant as follows:

A. Certifying the Class and their claims, as set forth in this Complaint, for class treatment;

B. Appointing the Plaintiff as Class Representative for the Class;

C. Designating Zuckerman Spaeder LLP and Psych-Appeal, Inc. as Class Counsel;

D. Declaring that the criteria in the 2017 Level of Care Guidelines are not consistent with generally accepted standards of care;

E. Permanently enjoining UBH from using the 2017 Level of Care Guidelines to administer requests for benefits by the Plaintiff, her daughter, or the members of the Class;

F. Ordering UBH to reprocess the Plaintiff's and the class members' requests for coverage that it wrongfully denied based in whole or in part on its 2017 Level of Care Guidelines,

pursuant to new guidelines that are consistent with generally accepted standards of medical practice;

G. Awarding other appropriate equitable relief, including but not necessarily limited to an appropriate monetary award based on disgorgement, restitution, surcharge or other basis, and additional declaratory and injunctive relief;

H. Awarding Plaintiff disbursements and expenses of this action, including reasonable attorneys' and expert fees, in amounts to be determined by the Court, pursuant to 29 U.S.C. § 1132(g); and

I. Granting such other and further relief as is just and proper in light of the evidence, including but not limited to removal of UBH as a fiduciary as a result of its pattern of conduct in violation of its fiduciary duties under ERISA.

Dated: October 25, 2019

PSYCH-APPEAL, INC.

/s/ Meiram Bendat  
Meiram Bendat (Cal. Bar No. 198884)

ZUCKERMAN SPAEDER LLP  
D. Brian Hufford (*pro hac vice* forthcoming)  
Jason S. Cowart (*pro hac vice* forthcoming)  
Caroline E. Reynolds (*pro hac vice* forthcoming)

*Counsel for Plaintiff and the Putative Class*